IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.CJ.
APPEAL NO. 654 OF 2006
IN
NOTICE OF MOTION NO.3355 OF 2004
IN
SUIT NO.3281 OF 2004

Vatanakurussi K. Viswanathan .. Appellant
v/s.
Kvaerner Powergas India Ltd. and others .. Respondents

Mr.Rohit Kapadia, senior counsel with Mr. J.P. Sen and Mr. Chirag Modi i/by M/s. RMG Law Associates for the Appellant.

Ms. Madhavi Diwan i/by M/s. Udwadia & Udeshi for the respondent Nos.1 to 4.

Dr. Virendra Tulzapurkar, senior counsel with Mr. A.G. Damle for the respondent No.5.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.
DATED : 12TH SEPTEMBER, 2006.

P.C.

We heard Mr. Rohit Kapadia, the senior counsel for the appellant for quite some time and carefully perused the deed of DPG Staff Education Benefit Trust, made on 20th February, 1985.

2. It is not in dispute before us that the plaintiff was in employment of DAVY Power Gas India Pvt.Ltd. on the date the said trust came into existence. That the appellant has ceased to be in employment of the said company since the year 1996, is not

in dispute. In the suit filed by the plaintiff, he has sought for a declaration that he is beneficiary of the aforesaid trust during his lifetime amongst other reliefs. The question that needs to be considered by us, though prima facie, is: is the plaintiff beneficiary within the meaning of the aforesaid trust.

2. The expression “beneficiaries” is defined in Article 2(b)(ii) thus-

> “(ii) `BENEFICIARIES' mean the employees employed in the Company as on the date of execution of this TRUST and who may be employed hereinafter, in the category of employees with a basic salary of not less than Rs.2000 per month and with a minimum service of aggregate 10 years with Davy Powergas India Private Limited and/or Powergas Services (India) Private Limited on the first day of April in any year and who are not shareholders of the Company, provided that if any person employed in the company is found to be guilty of misconduct or moral turpitude he shall not be entitled to be a beneficiary or thenceforth cease to be the beneficiary under this TRUST as the case may be.”

3. Article 3 provides for duration of trust for a period of 18 years from the date of its execution or upto the end of the lifetime of the last of its present beneficiaries living as on the date of the execution of the trust whichever is longer or determination of the trust on passing of an order or an effective resolution for winding up or liquidation of the company. Article 5 provides for application of contributions and funds and income etc. Clause (iii) thereof which is relevant, reads thus-

(iii) The objects of the TRUST on, towards and for which the contributions income and the funds shall be applied are the promotion, advancement and attainment of educational benefits of Employees and in particular as under:

(a) to acquire by purchase or otherwise, to take on hire and to run and maintain lodging;

(b) to give scholarship and educational grants for the promotion of education of the EMPLOYEES and their families;

(c) to provide for library or sports facilities to the EMPLOYEES;

(d) to acquire, maintain, take on hire or lease or otherwise grounds or parks or such property for providing recreational facilities for the general well being for the benefit of the EMPLOYEES and particularly mental relaxation and healthy involvement;

(e) general assistance in promotion the health of the EMPLOYEES;

(f) to provide facilities for maintaining good physical health and condition including facilities for aerobatic exercises, amenities of the therapeutical value etc.

(g) to provide educational facilities for example:

(i) to establish, promote, institute, support, develop

and encourage, various institutions, art centres, schools, funds, trusts, academies vidhyapithas, colleges, etc. for the benefit of the EMPLOYEES;

(ii) to give scholarships, freeships, fellowships, and loans to deserving EMPLOYEES to prosecute any higher studies or training.

(h) to maintain gardens, playgrounds, cultural and/or recreation centres, sport clubs, and swimming pools, bath clubs, gymnasium, yoga classes or centres, for the benefit of the EMPLOYEES.

(i) to provide amenities for the spiritual development of all beneficiaries including arranging discourses, lectures, participation programmes and linked cultural activities;

(j) to give grants or make payments OR disbursements to Employees for their general benefit;

(k) generally to do everything as may be incidental or ancillary or conductive to the settlement of the benefits of Employees."

4. Article 20 provides that on the Trust coming to an end, the trustees shall take account of all the properties and assets of the trust as may be existing and after paying off all the dues and

settling all claims and disputes, the balance shall be distributed amongst the beneficiaries in the manner that may be decided by the trustees. Article 2(b)(ii) that defines beneficiaries and Article 5 (iii) read together, prima facie, leads us to hold that the expression "employees employed in the company" refers to the existing employees in the company on the date of the execution of the trust or who may be employed thereafter and that terms does not include the past employees or the employees who have retired from service or have ceased to be in employment of the company for any reason whatsoever. The existing relationship of the employee and the employer between the employee and the company for being beneficiary is essential. This view finds further support from the provision made in the definition of beneficiaries that if any person employed in the company is found to be guilty of misconduct or moral turpitude, he shall not be entitled to the beneficiary and ceased to be the beneficiary under the trust. Obviously, an employee is amenable to the disciplinary control of the company so long as he is in employment with the company and if during that employment, he is found guilty of misconduct or moral turpitude, his entitlement to the beneficiary ceases forthwith. Thus, the expression "provided that if any person employed is found to be guilty of misconduct or moral turpitude, he shall not be a beneficiary" gives the clue that there has to be subsisting employment in the company to be beneficiary under the Trust Deed. It is very pertinent to note that the term "employees" is defined in Article 2(b)(vi). That means any person in permanent employment of the employer. If a person ceases to be in employment, obviously, he cannot be a person in permanent employment of the employer. To have the status of an employee, the person has to be in permanent employment of the employer

and once that person ceases to be in permanent employment of the employer, he ceases to be an employee and consequentially ceases to be beneficiary within the meaning of Article 2(b)(ii). All the benefits under Article 5(iii) are provided to the employees. In other words, the persons who continue to be in permanent employment of the company.

5. Mr. Rohit Kapadia, the senior counsel relied upon the judgment of the learned single Judge of this court dated 26th April, 2001 in the case of Mr. M.R. Menon and another v. Kvaerner Powergas India Ltd. and others, (Notice of Motion No.3943 of 1999) in support of his contention that the former employees are beneficiaries and therefore entitled to the benefits of the trust. Having carefully considered the judgment of the learned Single Judge of this court cited supra, we are of the view that the said judgment has no application to the present case and is of no help for the construction of the expression “beneficiaries” in the present case. In the case that was under consideration before the learned single Judge referred to above, expression “beneficiaries” defined under the trust deed reads thus-

> “The employees employed in the company as on the date of execution of this TRUST and who may be employed hereinafter, in the category of Indian Directors (not being Trustees thereof) shall be the beneficiaries under this Trust, provided that if any person employed in the company is found to be guilty of misconduct or moral turpitude he shall not be entitled to be a beneficiary or henceforth cease to be the beneficiary under this TRUST as the case may be. It is clarified that any beneficiary hereunder may continue to be a beneficiary notwithstanding his retirement from the services

of the company."

6. Looking to the aforesaid expression "beneficiaries" which was subject matter of consideration in the case of Mr. M.R. Menon, it is apparent that the expression "beneficiaries" included the persons notwithstanding their retirement from the service of the company.

7. Prima facie, therefore, we have no hesitation in holding that the appellant (plaintiff) is not covered by the expression "beneficiaries" under the subject trust deed and, therefore, not entitled to any interim relief.

8. The very important fact, before we close, which may be noticed by us is that the appellant ceased to be in employment of the company in the year 1996 and for about eight years, he did not get any benefits under the trust nor had he any grievance for having not been accorded any benefits under the Trust. It is only in the year 2004 that he came to the court and raised the grievance that he is beneficiary under the trust and entitled to the benefits thereunder and sought declaration to that effect. Until such declaration is granted by the court, we are satisfied that plaintiff is not entitled to any interim relief. Appeal is dismissed in limine.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)